

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

GERALD GEORGE, et al.,)
)
Plaintiffs,)
) Case No. 08-CV-03799
v.)
) Judge Ruben Castillo
KRAFT FOODS GLOBAL, INC., et al.,)
)
Defendants.)

KRAFT DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT

Defendants, Kraft Foods Global, Inc. (“KFGI”), Kraft Foods Global, Inc. Administrative Committee (“Ad. Comm.”), Kraft Foods Global, Inc. Benefits Investment Committee (“BIC”), Jim Dollive, Karen May, Marc Firestone, Pamela King, Timothy McLevish, Kraft Foods Inc. (“KFI”), Kraft Foods Global, Inc. Management Committee of Employee Benefits (“MCEB”), Compensation and Governance Committee of the Kraft Foods Inc. Board of Directors (“CGC”), and Kraft Foods Global, Inc. Kraft Benefits Investment Group (“KFGI BIG”) (collectively referred to as the “Kraft Defendants”), pursuant to Federal Rule of Civil Procedure 12(b)(6), hereby move to dismiss Plaintiffs’ Complaint. In support of their motion, the Kraft Defendants state as follows:

1. On October 16, 2006, Plaintiffs filed a complaint against seven of the current twelve Kraft Defendants, alleging that they were fiduciaries of a 401(k) plan and that they had engaged in various inappropriate acts relating to the fees charged to operate the plan.

2. On July 2, 2008, after being denied leave to amend their original complaint to add a host of new claims and parties, Plaintiffs filed the present Complaint, alleging that the Kraft Defendants breached their fiduciary duties to the same 401(k) benefit plan by imprudently selecting two particular investment options for the plan.

3. On August 21, 2008, the Kraft Defendants’ counsel sent a letter to Plaintiffs’ counsel, notifying Plaintiffs of the legal and factual bases for this Motion to Dismiss in an effort to resolve the matters relating to this Motion and in compliance with this Court’s case management procedure.

4. As stated in further detail in the Kraft Defendants' supporting memorandum of law, Plaintiffs' Complaint should be dismissed because (1) it is untimely; (2) Section 404(c) of the Employee Retirement Income Security Act relieves the Kraft Defendants of any liability as Plaintiffs elected to invest in the funds they allege were imprudent; (3) the Plan did not give authority to Ad. Comm., KFI and KFGI to select investment options, and thus, they were not fiduciaries for that purpose; and (4) as to any allegation other than the claim that the Kraft Defendants allegedly breached their fiduciary duties by selecting allegedly imprudent investment options, the Complaint fails to meet the Rule 8 pleading requirements.

WHEREFORE, for the foregoing reasons and those stated in the Kraft Defendants' accompanying memorandum of law, the Kraft Defendants respectfully request that Plaintiffs' Complaint be dismissed with prejudice.

DATED : August 22, 2008

Respectfully submitted,

DEFENDANTS KRAFT FOODS GLOBAL, INC.;
KRAFT FOODS GLOBAL, INC.
ADMINISTRATIVE COMMITTEE; BENEFITS
INVESTMENT COMMITTEE; JIM DOLLIVE;
KAREN MAY; MARC FIRESTONE; PAMELA
KING; TIMOTHY MCLEVISH; KRAFT FOODS
INC.; KRAFT FOODS GLOBAL, INC.
MANAGEMENT COMMITTEE OF EMPLOYEE
BENEFITS; COMPENSATION AND
GOVERNANCE COMMITTEE OF THE KRAFT
FOODS INC. BOARD OF DIRECTORS; AND
KRAFT BENEFITS INVESTMENT GROUP

/s/ Amanda A. Sonneborn

One of Their Attorneys

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that on August 22, 2008, she caused a copy of KRAFT DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT to be presented to the Clerk of the Court for filing and uploading to the CM/ECF system, which will send notification of such filing to the following CM/ECF registrants:

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/s/ Amanda A. Sonneborn
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